

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 4:22-CR-00125-ALM

JAMES WALKER WATSON, JR.

**STATEMENT OF FORMER MAGISTRATE JUDGE**  
**UNDER FEDERAL RULE OF APPELLATE PROCEDURE 10(c)**

Defendant James Walker Watson, Jr. appeared before the undersigned with counsel, Spence Graham, on May 4, 2023 to enter a plea of guilty to Count Two of an Indictment charging Defendant with a violation of Title 18 U.S.C. 1343 – Wire Fraud (ECF No. 35). The Government appeared through Assistant United States Attorney Brent Andrus. On May 4, 2023, Defendant’s Consent, Plea Agreement, Plea Agreement Addendum, Factual Basis, and the Findings of Fact and Recommendation on Guilty Plea by the undersigned were each docketed. The Parties waived objections to the Findings of Fact and Recommendation on Guilty Plea. The plea hearing was recorded digitally; however, in connection with Defendant’s appeal to the United States Fifth Circuit, the courtroom deputy has informed the Court that the digital file cannot be located. Court personnel have worked diligently, but without success, to locate the digital file. Therefore, a transcript of Defendant’s Change of Plea Hearing cannot be provided.

The undersigned has no independent recollection of the plea hearing in this case. However, in all plea hearings held before the undersigned, the Court addressed the defendant personally in open court and informed the defendant of, and determined that the defendant understood, the admonitions contained in Rule 11 of the Federal Rules of Criminal Procedure. The undersigned followed a written script that included the advisement of constitutional rights, the possible penalties of conviction, and sentencing information.

The Court admonished each defendant according to the following procedure: after placing the defendant under oath, the Court informed the defendant of his right to enter his plea of guilty before the district judge assigned to the case, but advised that he may consent to enter his guilty plea before the undersigned. The Court informed the defendant if he consented to proceed before the undersigned, the Court would make findings on the record and recommend to the district judge that he accept his plea of guilty. After explaining the consent, the undersigned reviewed the written consent form. The undersigned orally went over the consent form with the defendant to make sure that the defendant read it before signing it. The undersigned asked the defendant if he wished to consent and proceed with his plea of guilty. If consent was granted, the defendant was informed that he had fourteen (14) days from the date of the hearing to file any objections to the findings and inquiry was made as to whether any party desired to waive objections. Here, at the conclusion of the plea hearing, the Parties waived objections to the Findings of Fact and Recommendations on Guilty Plea.

As referenced above, in plea hearings before the Court, defendants are advised of their constitutional rights and given additional admonitions according to a written script, which generally reads as follows:

#### **SCRIPT FOR TAKING GUILTY PLEAS**

The Court calls case number \_\_\_\_\_; styled United States vs. \_\_\_\_\_.  
Please state your appearances for the record.

#### **OATH**

Mr. \_\_\_\_\_, the first thing we are going to do is swear you in, so will you please raise your right hand and, be sworn?

Can you please state your full name for the record?

Mr. \_\_\_\_\_, do you understand that you are now under oath and that if you answer any of my questions falsely your answers may later be used against you in a prosecution for perjury or making a false statement?

## TRANSLATION

Do you read, write and understand the English language?

[If NO, then state on the record that Mr./Ms. \_\_\_\_\_ has been previously sworn as the interpreter for this proceeding today and ask if Defendant is able to understand the proceedings through the interpreter.]

## CONSENT

Do you have a copy of the Information/Indictment before you? And is it your intent today to plead to Count \_\_\_\_ of that Information/Indictment at this time?

Before we go any further, I want to make sure you understand you have the right to appear before the district judge assigned to your case to enter a plea of guilty, but you can agree to have a Magistrate Judge take your guilty plea and make a recommendation to the District Judge that s/he accept or reject your plea. Do you understand that you have this right?

Have you consulted with your counsel regarding consenting to have your plea heard by a United States Magistrate Judge?

Is it your desire to waive your right to proceed before a United States District Judge and have your plea taken by me, a United States Magistrate Judge?

And have you signed a written consent form telling the Court that is how you wish to proceed?

Am I holding that form?

Is this your signature on the form?

Did you read this form, [have it translated into your own language], and discuss it with your attorney before you signed it?

Do you still want to go forward before a U.S. Magistrate Judge today?

**FINDING: I find that the consent has been knowingly and voluntarily given, and we will proceed with the plea hearing.**

## CONSTITUTIONAL RIGHTS

Now I want to go over some of your constitutional rights - they are outlined in the written consent form you signed, but I want to go over them in open court as well. Do you understand that you have the right to plead not guilty to any offense charged against you? And if you plead not guilty the Constitution of the United States guarantees to you the following rights:

- (a) A speedy and public trial by a jury in this district.
- (b) The right at such a trial for you to see, hear, and cross-examine all witnesses against you.
- (c) The right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in your favor.
- (d) The right to have the assistance of an attorney in your defense in all stages of the proceedings. If necessary, an attorney would be appointed to represent you if you did not have an attorney.
- (e) At such a trial, you could not be compelled to testify and whether you would testify would be a matter in which your judgment alone would control.
- (f) At such a trial the United States would be required to prove your guilt beyond a reasonable doubt; and
- (g) If you were found guilty you would have the right to appeal your conviction.

Mr. \_\_\_\_\_, do you understand that you have and are guaranteed each of these constitutional rights?

#### **WAIVER OF RIGHTS/CONSEQUENCES OF PLEA**

If you plead guilty and if that plea is accepted by the district judge, there will be no trial, so by pleading guilty you would waive the right to a trial as well as those other rights associated with a trial as I have described them. Do you understand and agree to that?

If you plead guilty, you will be convicted of the offense charged by Count \_\_\_\_\_. Do you understand the consequences of pleading guilty here today?

#### **COMPETENCE OF DEFENDANT**

Mr. \_\_\_\_\_, I'm now going to get a little bit of background information from you. How old are you?

What was the last grade you completed in school?

Occupation? What do you do?

Have you ever been hospitalized or treated for narcotics addiction or alcoholism?

Have you ever been diagnosed with any emotional or mental disability or problem?

[If yes, within the last six months, have you been under the care of any doctor for narcotics, alcoholism or any emotional or mental disability/problem?]

Are you currently under the influence of alcohol or any drug?

Do you feel physically and mentally fit and able to proceed here today?

Do you know of anything which might affect your ability to understand why you are here and what you are doing today?

Are you comfortable that you fully understand what you are going to do today?

If you have any questions during this proceeding or if you need time to consult with your attorney, please just stop me at any time, ok?

ASK DEFENSE COUNSEL: Counsel, do you have any reason to believe that Mr./Ms. \_\_\_\_\_ is not fully competent to enter a plea of guilty?

ASK DEFENSE COUNSEL: Do you believe that his/her plea of guilty will be a knowing and voluntary plea?

### **COMPETENCY OF COUNSEL**

Sir/Ma'am. Have you discussed all of the facts in this case with your attorney and your proposed plea as well as any defenses that you might have to these charges?

Are you satisfied that your attorney has fully considered your case, as well as any defenses you may have to the charges?

Are you fully satisfied with the representation and advice you have received in connection with your case and your proposed plea of guilty?

### **ADVICE OF CHARGE AND ELEMENTS OF OFFENSE**

Do you still have a copy of the indictment/information in this case before you?

And you have read the indictment/information or had it read to you? [Has it been translated for you?]

And again you understand that you have been charged with \_\_\_\_\_?

I can ask the government to read those charges out loud for the record at this time or would you like to waive the reading?

If waive, so that you fully understand the nature of the charges against you, we will still go over the elements of this offense.

I'm going to ask the government's counsel to read the essential elements of the offense. This is what the government would have to prove at trial beyond a reasonable doubt to convict you, and I'm going to ask you some questions about those elements when the AUSA is done. AUSA READS ESSENTIAL ELEMENTS

Do you understand the nature of the charges and each of the essential elements just set forth by the AUSA?

Do you admit that you committed each of those essential elements of the offense as they have just been explained to you?

If you plead guilty to the offense charged, you will be admitting each of these elements? Do you understand?

## **PENALTIES**

I want to also go over the penalties that you could receive by pleading guilty.  
[Read notice of penalty, plea agreement or AUSA will now state the potential penalties for and consequences of conviction of the charge or charges to which you are proposing to plead]

### **Review Checklist:**

1. Maximum possible penalty provided by law
2. Mandatory minimum penalty
3. Duration and effect of any authorized or mandatory term of supervised release [or special parole term under old law]
4. **[IF THE OFFENSE CARRIES A MAXIMUM SENTENCE OF 25 YEARS OR MORE (20 YEARS OR MORE IF COMMITTED BEFORE NOVEMBER 18, 1988)]:** Unavailability of probation under 18 U.S.C. § 3561(a)(1).
5. Restitution
6. Forfeiture
7. **[IF OFFENSE INVOLVES FRAUD OR OTHER INTENTIONALLY DECEPTIVE PRACTICES]:** Notification of conviction to the victims of the offense (See 18 U.S.C. § 3555)
8. Mandatory special assessment
9. **[IF OFFENSE INVOLVES POSSESSION OR TRAFFICKING IN DRUGS AFTER NOVEMBER 18, 1988]:** Denial of certain federal benefits. See 21 U.S.C. § 862.
10. **[IF OFFENSE INVOLVES POSSESSION OF A CONTROLLED SUBSTANCE AFTER NOVEMBER 18, 1988]:** Possibility of being required to successfully complete approved drug program and perform community service. See 21 U.S.C. § 862.

[If not already already expressly covered make sure to go back state if there could be forfeiture or restitution or special assessment which must be paid by cashier's check or money order]

Do you have any questions about the penalties that have just been read to you and that you could receive if you plead guilty?

Do you understand that if you plead guilty you are subject to the range of penalties and consequences just explained to you?

### **ADVICE REGARDING SENTENCING GUIDELINES**

[If Plea Agreement (Rule 11(c)(1)(c)) - Before we turn to your plea agreement, I know that you and the government have reached an agreement related to your sentencing which we are going to discuss more, but.....]

It is important for you to realize and understand how the process of sentencing generally works. In federal court, it is the District Judge who decides the sentence whether a defendant is convicted by a jury or upon a plea of guilty. In determining a sentence, the district judge has to consider the Federal Sentencing Guidelines, but is not required to follow them.

Have you discussed with your attorney the sentencing guidelines, and how they may be used or applied to your case?

Do you understand that the sentencing GUIDELINES are not mandatory and the sentencing judge is not obligated to follow them in this case?

Do you understand that the court will not be able to determine the guideline sentence for your case until after the presentence report has been completed and you and the government have had an opportunity to challenge the facts and the calculations reported by the probation officer?

And do you understand that the sentence imposed may be different from any estimate your attorney, the government, or the probation office may have given you?

Since the sentencing guidelines are not binding on the court, the sentencing judge may depart from them and sentence you up to the statutory maximum. Is that clear?

### **IF PLEA AGREEMENT**

Now I want to go over your Plea Agreement. I do have a "Plea Agreement" that was filed in this case on \_\_\_\_.

Do you have a copy before you? Please look with me at the last page and tell me if that is your signature on that page(s) \_\_\_\_?

Did you read it (have it read/translated) before you signed it?



Did you discuss with your attorney before you signed it?

Were you comfortable that you understood everything stated in it before you signed it?

Are all of the terms of your agreement with the government set out in this written plea agreement? Is this the entire plea agreement?

I'll ask government's counsel to summarize the plea agreement in this case.

I'd also specifically like to go over some of the terms summarized with you [as applicable].

In paragraph \_\_, there is an agreement:

## **AGREEMENTS**

### **OTHER CHARGES -Rule 11(c)(3)(A):**

By the government not to bring [and/or to dismiss] other charges against you based on the same underlying conduct [11(c)(1)(A) agr.] Because your plea agreement has this promise by the government, the District Judge has to decide whether to accept the plea agreement. **Do you understand that if the judge does not accept it, you will then have an opportunity to withdraw your guilty plea and change it to not guilty [under Rule 11(d)(2)(A)].**

### **SENTENCING RECOMMENDATION - Rule 11(c)(3)(B):**

By the government to recommend or to not oppose a request that a particular sentence or sentencing range is appropriate [or that a particular provision of the Guidelines, policy statement or sentencing factor applies or does not apply] [11(c)(1)(B) agr.]. Do you understand that the District Judge is not bound by the sentencing recommendation in the plea agreement? **Do you understand that if the District Judge does not accept the sentencing recommendation in your plea agreement you will still be bound by your plea of guilty and will have no right to withdraw it?**

**If the sentence you receive is more severe than you expect, you will still be bound by your plea. Do you understand this?**

### **SPECIFIC SENTENCE - Rule 11(c)(3)(A):**

That a specific sentence or sentencing range is appropriate [or that a particular provision of the Guidelines, policy statement or sentencing factor applies or does not apply][11(c)(1)(C) agr.]. Since your plea agreement with the government has this agreement, the District Judge has to decide whether to accept the plea agreement. **Do you understand that if the Judge does not accept the agreement, you will then have an opportunity to withdraw your plea of guilty and change it to not guilty [under Rule 11(d)(2)(A)].**



**FORFEITURE -Rule 11(b)(1)(J):**

By you to give up all right, title and interest is the property listed in that paragraph. Do you understand that you have agreed to give up your rights to, and to not challenge the forfeiture of that property? Did you voluntarily and of your own free will agree to give up your rights to that property?

**IMMIGRATION CONSEQUENCES:**

Are you a US citizen?

**If NO:** Do you understand that if you are not a citizen of the U.S., your conviction in this case will likely result in deportation or removal from the United States and could also adversely affect your ability ever to become a citizen of the United States – that is, if convicted, you could denied citizenship and denied admission to the United States in the future?

Did you discuss with your attorney the possible consequences of conviction, including deportation?

Did you have enough time to discuss these matters with your attorney?

Do you understand that no one, including your attorney or even the Court can predict what the specific consequences of a plea of guilty will be on your legal status?

Knowing that the specific consequences cannot be predicted, do you still wish to plead guilty?

**If YES - LOSS OF CITIZENSHIP RIGHTS:** Do you understand that the offense to which you are pleading guilty is a felony, and that conviction of a felony may deprive you of valuable rights of citizenship such as the right to vote, to hold public office, to serve on a jury, to possess any kind of firearm, and other rights?

Do also understand that by pleading guilty that there are other social and economic consequences?

**WAIVER OF RIGHT TO APPEAL -Rule 11(b)(1)(N):**

Do you understand that under some circumstances you or the Government may have the right to appeal any sentence imposed?

On page \_\_\_, paragraph \_\_\_, there is a provision entitled "Waiver of Appeal or otherwise challenge sentence" I need to go over this provision with you because it deals with your appellate rights and what it says is that you have given up your right to appeal your conviction and sentence on all but two grounds. You've also agreed not to contest those things in any post conviction proceeding, including but limited to a Section 2255 proceeding. Do you understand that?

Do you understand that you have only reserved the right to appeal or otherwise challenge your conviction &/or sentence where [insert specific language from

waiver provision]?

Did you voluntarily and of your own free will agree to give up your right to appeal or otherwise challenge except in the limited circumstances set out in paragraph \_\_?

**[IF SEX OFFENDER REGISTRATION CONTAINED IN PLEA AGREEMENT MUST ALSO GO OVER THAT PROVISION]**

**TO DEFENSE COUNSEL:**

Have you discussed this plea agreement thoroughly with your client including the provision regarding waiver of appeal?

In your opinion does your client understand the plea agreement in its entirety?

**TO DEFENDANT:**

Now Defendant, are those the terms of your plea agreement as you understand them?

Let me also ask did you voluntarily and of your own free will enter into the plea agreement?

Do you have any questions about any terms of the plea agreement?

Do you represent here today that you fully understand the plea agreement and its terms?

Other than the written plea agreement, has anyone made any promise or assurance to you of any kind in an effort to induce you to enter a plea of guilty in this case?

By placing your signature upon it, are you asking the Court to approve and accept your plea agreement?

**VOLUNTARINESS – Rule 11(b)(2)**

A defendant who is accused of a crime cannot plead guilty unless he/she is actually guilty of that crime.

If you plead guilty, your plea must not be induced or prompted by any pressure, threats, force, or coercion of any kind or by any promises other than promises in a plea agreement. A plea of guilty must be purely voluntary, and you should plead guilty only because you are guilty, and for no other reason.

Has anyone in any way tried to get you to make you plead guilty in this case?

Has anyone threatened you to get you to plead guilty?

Are you pleading guilty to help anyone else?

Are you pleading guilty of your own free will because you are guilty?

**FACTUAL BASIS – Rule 11(b)(1)(3)**

Before I can recommend to the District Judge that s/he accept the plea of guilty, I must find that there is a factual basis to support the plea.

I have before me a document entitled Factual Resume. Do you have the Factual Resume before you? [If no, factual resume recess to allow Defendant to prepare and present to court]

Did you read it or have an opportunity to have it translated into your own language?

And this is your signature on the Factual Resume?

Did you discuss it with your attorney before you signed it?

Were you comfortable that you understood everything stated in the Factual Resume before you signed?

I'm going to ask Government to read the Factual Resume now. Please listen carefully, because when I am finished I will ask you if you agree with the facts.

Is everything in the factual resume true and correct?

Do you understand that by admitting that you engaged in this conduct you are admitting the charge against you in Count \_\_\_\_ of the indictment?

Do you specifically acknowledge and agree with the facts constituting proof of the commission of the offense and the charges against you in the INFORMATION/INDICTMENT in every respect?

Are there any changes you would offer?

**So in your own words tell me what you did in this case? [ASK PER DJ]**

Are both defense counsel and the government satisfied that there is a factual basis for this guilty plea?

Are both defense counsel and the government satisfied that the court have fully complied with the requirements of Rule 11?

**WRAP UP/REITERATE**

**TO DEFENSE COUNSEL:**

Are you aware of any reason whatsoever why your client is not able to enter a knowing and intelligent plea at this time?

Has Defendant been able to cooperate with you?

Have you discussed the facts of this case in detail with the defendant?

Do you join or agree in the decision to plead guilty?

**TO DEFENDANT:**

Do you understand everything that has gone on here today?

Do you have any questions?

Are you pleading guilty because you are guilty?

**HAVE PLEA AGREEMENT, CONSENT, WAIVER AND FACTUAL BASIS  
ENTERED INTO THE RECORD**

**PLEA**

Before I ask how you plead, do you have any questions or need to talk to your attorney?

Having heard all of this, how do you plead to Count \_\_\_\_\_ of the indictment (information), guilty or not guilty?

**FINDINGS: In the case of United States of American vs \_\_\_\_\_, Case # \_\_\_\_\_, the court will recommend that the District Judge accept the Defendant's plea of guilty. The Court further finds that:**

You are competent to plead at this time;

You have had assistance of counsel;

You understand your trial rights;

You understand the nature of the charges against you;

You understand the maximum penalties that can be given to you under a sentence in connection with the Indictment;

You understand that the court will refer to the sentencing guidelines to set any sentence, which such guidelines are merely discretionary;

Your plea is knowing and voluntary; and

There is a factual basis for your plea.

The Court finds that the ends of justice will be served by the acceptance of the defendant's plea of guilty.

I have now signed a recommendation that the District Judge accept your plea. Let me inquire whether the Government waives the objections period so that my recommendation can be sent immediately to the District Judge for adoption? Will the Defendant waive? If you or your attorney have any objections those objections must be filed within 14 days from

the date of this hearing.

The Court will then send the recommendation to the District Judge.

**PRE-SENTENCE REPORT**

A written presentence report will be prepared by the Probation Office to assist the judge in sentencing.


You will be asked to give information for the report and your attorney may be present, if you wish.

The court will permit you and your counsel to read the presentence report before the sentencing hearing and to make objections, if you deem necessary.

You and your attorney will be afforded the opportunity to address the court at the sentencing hearing, which will be scheduled by the District Court.

Anything further from government on the plea? From Defense?

**SIGNED** on January 6, 2025.



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Christine A. Nowak  
UNITED STATES MAGISTRATE JUDGE,  
FORMER

